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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,821	08/04/2003	David S. Benco	LUTZ 2 00233	7513
7590 12/11/2007 Richard J. Minnich Fay, Sharpe, Fagan, Minnich & McKee, LLP Seventh Floor 1100 Superior Avenue Cleveland, OH 44114			EXAMINER CHERY, DADY	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/633,821	Applicant(s) BENCO ET AL.	
	Examiner Dady Chery	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1,3-8,11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This communication is responsive to the amendment filed on 10/17/2007.

Response to Arguments

1. Applicant's arguments filed 10/17/2007 have been fully considered but they are not persuasive.
2. Kahveci discloses the instant claimed invention as claiming in claims 1 and 8.
3. Kahveci teaches a method for dynamically allocating bandwidth based on demand (Col. 2, lines 63 – 65). Kahveci discloses a threshold value that includes a predetermined level data in the queue (Col. 2, lines 53 - -55). This is considered as the higher network capacity as claimed by the instant application.
4. Kahveci also discloses request additional bandwidth if the demand exceeds the network capacity (Fig. 3, ST4, ST5). Release additional bandwidth if the demand is less than the second threshold (Fig. 3, ST7, ST8), this is considered as the original network capacity.
- 5.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1,3- 8,11- 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahveci et al. (US Patent 6,973,037, hereinafter Kahveci) in the view of Ogasawara et al.

Regarding claim 1, Kahveci discloses *a method for reconfiguring network capacity in a communication network* (Fig. 3), *the method including the steps:*

- a) *determining if a current demand for network capacity exceeds a first value*
(ST4);
- b) *if the current demand exceeds the first value, reconfiguring network capacity for the wireless network to a higher network capacity* (ST5);
- c) *determining if the current demand is less than a second value* (ST7);
- d) *if the current demand is less than the second value, reconfiguring network capacity for the network to the original purchased or lower network capacity* (ST8) (Col. 2, lines 34 –39 and lines 53- 62).

Kahveci disclose the step b) (Fig. 4) further including: *accumulating usage data at the higher network capacity* (ST7); the system monitored the amount the additional bandwidth has been allocated (Col. 2, lines 58 –59).

and step d) *further including: communicating the usage data associated with the higher network capacity to a network equipment/software provider's billing system*. It is inherent to communicate the usage of the additional bandwidth to the provider's billing system because the system is monitored by the provider and every user has to pay for the service received.

Kahveci differs from the claimed invention by using and ISDN network which is a digital network instead of a wireless network.

However, Ogasawara teaches a wireless network (20) connected to an ISDN network (10) (Fig. 4).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ISDN network to a mobile network for providing a radio communication method and a radio system which allow data transmission in a wide band modulation signal and at a high speed without deterioration of the data quality (Col. 1, lines 60 – Col. 2, lines 4).

Regarding claims 3 and 11, Kahveci discloses *the method as set forth in claim 2, further including: e) periodically repeating steps a) through d) during operation of the network* (Fig. 3). The arrows show that the steps are repeating periodically.

Kahveci differs from the claimed invention by using and ISDN network which is a digital network instead of a wireless network.

However, Ogasawara teaches a wireless network (20) connected to an ISDN network (10) (Fig. 4).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ISDN network to a mobile network for providing a radio communication method and a radio system which allow data transmission in a wide band modulation signal and at a high speed without deterioration of the data quality (Col. 1, lines 60 – Col. 2, lines 4).

and step d) *further including: communicating the usage data associated with the higher network capacity to a network equipment/software provider's billing system.* It is inherent to communicate the usage of the additional bandwidth to the provider's billing system because the system is monitored by the provider and every user has to pay for the service received.

Regarding claims 4 and 14, Kahveci discloses the claimed invention except for the first value is about 0.90. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the first value at 0.90, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claim 5, Kahveci discloses the claimed invention except for the second value is about 0.70. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the second value at 0.70, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claim 6, Kahveci discloses the claimed invention except for the capacity is about 500K busy hour call events. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the capacity is about 500K busy hour call events, since it has been held that discovering an optimum

value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claims 7, 15, Kahveci discloses the claimed invention except for the capacity is about 1000K busy hour call events. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the capacity is about 1000K busy hour call events, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claim 5, Kahveci discloses the claimed invention except for the second value is about 0.35. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the second value at 0.35, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claims 12 and 13, Kahveci discloses (Fig. 7) a method where the central office switch (18) determines that the number of minimum and maximum channels are available (Col. 8, lines 27 – 46). If this case the system increase or decrease the bandwidth (Col. 2, lines 35 – 39). This is the same function as determining if the service provider reaches the highest and the lowest capacity and continue from step a) to d) as described by the instant application.

Allowable Subject Matter

5. Claims 18 - 20 allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dady Chery whose telephone number is 571-270-1207. The examiner can normally be reached on Monday - Thursday 8 am - 4 pm ESt.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Dady Chery 12/07/2007
7.


RICKY Q. NGO
SUPERVISORY PATENT EXAMINER